

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF	:
	:
SARA-JANE RICE AND MCKENNA LAW	:
LLC,	:
Requester	:
	: Docket No: AP 2026-3191
v.	:
	:
DOWNINGTOWN AREA SCHOOL	:
DISTRICT,	:
Respondent	:

FACTUAL BACKGROUND

On July 13, 2026, Sara-Jane Rice, on behalf of McKenna Law, LLC (collectively “Requester”) submitted a request (“Request”) to the Downingtown Area School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. ... [A]ny all documents reviewed, consulted upon, received, referenced, analyzed, assessed, referenced, utilized, collected, compiled, or otherwise used by the District in assessing, verifying or otherwise calculating the per-pupil expense to educate students in District schools for the 2024-2025 and 2025-2026 school years as referenced in the District’s NSPRA Gold Medallion Entry regarding the #ChooseDASD Campaign (see attached), including but not limited to PDE-363 forms, spreadsheets, calculation worksheets, workpapers, source data, databases, electronic files, formulas, supporting documentation, memoranda, reports, analyses, budgets, invoices, itemized billing records, presentations, demonstrations, evaluation materials, scoring documents, and any other documents, whether in draft or final form, drafted, created, prepared, developed, generated, produced, compiled, collected, submitted, transmitted, received, revised, edited,

maintained, retained, presented, exchanged, or otherwise used by, between or on behalf of the District, it's employees, contractors or representatives.

2. ... [A]ny and all documents reviewed, consulted upon, received, referenced, analyzed, assessed, referenced, utilized, collected, compiled, or otherwise used by the District in assessing, verifying or otherwise calculating the per-pupil expense to educate District students in charter schools for the 2024- 2025 and 2025-2026 school years as referenced in the District's NSPRA Gold Medallion Entry regarding the #ChooseDASD Campaign, including but not limited to PDE-363 forms, spreadsheets, calculation worksheets, workpapers, source data, databases, electronic files, formulas, supporting documentation, memoranda, reports, analyses, budgets, invoices, itemized billing records, presentations, demonstrations, evaluation materials, scoring documents, and any other documents, whether in draft or final form, drafted, created, prepared, developed, generated, produced, compiled, collected, submitted, transmitted, received, revised, edited, maintained, retained, presented, exchanged , or otherwise used by, between or on behalf of the District, it's employees, contractors or representatives.

3. ... [A]ny and all PDE-363 forms submitted to Pennsylvania Department of Education ("PDE") by the District for the 2024-2025 school year including but not limited to all original PDE-363 submissions, all amended, revised, corrected, and/or resubmitted PDE-363 forms.

4. ... [A]ny and all PDE-363 forms submitted to PDE by the District for the 2025-2026 school year including but not limited to all original PDE-363 submissions, all amended, revised, corrected, and/or resubmitted PDE-363 forms.

On July 20, 2026, the District responded to the Request, by providing records. The District's response included the date of the response, the procedures to appeal a denial of access, and attached records. However, pursuant to Section 903 of the RTKL an agency's response denying access to records is required to include is also required to provide "[t]he specific reasons for the denial, including a citation of supporting legal authority." 65 P.S. § 67.903(2). Here, in its response, the District did not indicate if the Request had been denied or partially denied, which parts of the Request had been denied or partially denied, and it did not include the supporting legal authority for the denial of any responsive records. As a result, the District's response failed to comply with Section 903 of the RTKL.

On August 5, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The Requester asserts that the District failed to conduct a good faith search and that the records provided are incomplete, as additional records should exist within the District’s possession, custody or control. The OOR invited both parties to supplement the record and directed the District to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On August 31, 2026, the District submitted a position statement setting forth the District’s grounds for partial denial that had not been detailed in the July 20, 2026 final response along with “the ... District’s additional responses on appeal.” The District partially denied Item 1, claiming that records include personal notes or working papers, 65 P.S. § 67.708(b)(12) and that a portion of Item 1 is insufficiently specific, 65 P.S. § 67.703. Regarding Item 1, the District included copies of the PDE-363 records sought and previously provided and further argues that no additional responsive records exist. The District partially denied Item 2 of the Request, relying on the grounds set forth for a partial denial of Item 1. The District granted Items 3 and 4, and provided copies of responsive PDE-363 records that had been provided with the final response. On September 1, 2026, the District submitted the verified attestation of Virginia Warihay, the District’s Open Records Officer (“Warihay Attestation”),¹ as well as an additional record responsive to Items 1 and 2 of the Request.²

¹ The Warihay Attestation was made pursuant to the penalties set forth in 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

² On August 10, 2026, based on the Requester’s agreement to extend the Final Determination deadline until September 22, 2026, the OOR granted the District’s request to extend the evidentiary submission deadline to August 31, 2026. Additionally, the District’s amended submission filed on September 1, 2026, was admitted to the record for consideration. *See* 65 P.S. § 1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

LEGAL ANALYSIS

The District is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the District is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). Likewise, “[t]he burden of proving a record does not exist...is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The District provided additional records on appeal

With the position statement, the District provided a copy of PDE-363 “Funding for Charter Schools” for the school year 2024-2025. Therefore, the appeal is dismissed as moot as to the records provided. *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records and, thus, “the controversy has been mooted”).

2. Items 1 and 2 are sufficiently specific

The District claims that the portion of Items 1 and 2 seeking “source data, databases, electronic files, formulas, supporting documentation ... analyses ... demonstrations, evaluation materials, scoring documents, and any other documents” is insufficiently specific because it requires the District to make judgments as to whether a record is responsive to the Request. Section

703 of the RTKL states that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703. When determining whether a particular request is sufficiently specific, the OOR uses the multifactor test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* at 1125 (quoting 65 P.S. § 67.102). Second, “[t]he scope of the request must identify ‘a discrete group of documents, either by type ... or by recipient.’” *Id.* (quoting *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)). Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126 (citing *Carey, supra*). “The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request’s timeframe is narrow enough is generally dependent upon the specificity of the request’s subject matter and scope.” *Id.*

The above factors are intended “to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested.... The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements.” *Pa. Dep’t of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), appeal denied, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting “the valid part of the request was included in a laundry list of requested materials”).

Items 1 and 2 clearly state a finite timeframe – the 2024-2025 and 2025-2026 school years. Items 1 and 2 also state a clear subject matter – records related to “the District’s NSPRA Gold Medallion Entry regarding the #ChooseDASD Campaign,” as the Requester included with the appeal a copy of a brochure outlining the District’s strategic plan initiative to strengthen the District’s community relationships and bolster enrollment. It is reasonable to infer that the District would be familiar with the initiative that was undertaken by District officials such as the Director of Communications, the Communications Manager and the Director of Student Relations and School Climate and, therefore, the subject matter is implied.

Regarding the scope of Items 1 and 2, a wide variety of types of records were sought, and requests seeking “any and all” records may be insufficiently specific. *See In re Mazin*, 2025 Pa. Commw. Unpub. LEXIS 190, *10-11 (Pa. Commw. Ct., Apr. 21, 2025) (explaining that while the request specified a subject matter that was well-known to the agency, it failed to identify any particular type of record and included expansive language seeking all correspondence “relating to” the already general terms it laid out); *but see Carey*, 61 A.3d at 372 (holding that a request seeking all communications over a time period of over four years was sufficiently specific “to apprise [the agency] of the records sought” because it was related to a “well-known” project). In addition, in certain situations, the ability to identify responsive records may indicate that a request is sufficiently specific. *See Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012) (noting that “the request was obviously sufficiently specific because the School District has already identified potential records included within the request”), *appeal denied*, 54 A.3d 350 (Pa. 2012); *Pa. Dep’t of Health v. Shepherd*, 2022 Pa. Commw. Unpub. LEXIS 207, *7 (Pa. Commw. Ct. May 13, 2022) (“an agency’s demonstrated ability to identify responsive records is a strong indication that a request was sufficiently specific.”) (internal citation omitted).

In this matter, while Items 1 and 2 identify several categories of records, such categories are distinct and discrete and “the specificity of a request must be construed in the request’s context, rather than envisioning everything the request might conceivably encompass.” *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012). As noted in *Greim v. Pa. State Police*, “[a] request need only provide enough information to inform “an agency of the records requested.” 329 A.3d 873, 882 (Pa. Commw. Ct. 2025) (quoting *Iverson*, 50 A.3d at 284, n.4). On balance, the District was provided with sufficient information to ascertain what records were being sought in Items 1 and 2 of the Request. Therefore, we conclude that the portions of Items 1 and 2 seeking “source data, databases, electronic files, formulas, supporting documentation ... analyses ... demonstrations, evaluation materials, scoring documents, and any other documents” are sufficiently specific. 65 P.S. § 67.703.

3. The District has not proven that records are personal notes and working papers

As noted above, in the District’s final response it failed to indicate what portions of the Request were granted or denied and, if portions were denied, on what grounds. On appeal, the District claims in a single sentence that “[y]our request for “workpapers” is denied pursuant to RTKL Section 708(b)(12), which exempts from public access “Notes or working papers prepared by or for a public official or agency employee used solely for that official’s or employee’s own personal use. 65 P.S. § 708(b)(12).” The evidence submitted by the District on appeal consists of the Warihay Attestation, which does not address the basis for which the District believes that certain records are exempt under Section 708(b)(12) or identify what those records are.

Under the RTKL, the District is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence

of a contested fact is more probable than its nonexistence.” *Scolforo*, 18 A.3d at 439. In this matter, the District has simply failed to provide any evidence to support its claim of exemption pursuant Section 708(b)(12).

4. The District proved that only certain records do not exist

Regarding Items 1 and 2 of the Request, the District states “[y]our request as to any other specified records is denied as no such records were found to exist.” Regarding Items 3 and 4 of the Request, the District states that the records were granted and “responsive PDE-363 records were previously provided with the ... District’s final response.”

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the identified record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining all potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency’s records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep’t of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In support of the District’s argument, the Warihay Attestation provides:

2. I reviewed the Right-to-Know request (“Request”) that is the subject of this OOR Appeal and provided the District's final response letter to Requester and requested PDE 363 records on July 20, 2026.

3. I have requested any responsive records from the School District’s Business Office in regard to any additional records potentially responsive to the Request.

4. The School District’s Director of Finance & Operations, Bryan Howett, advised me that he searched through his predecessor’s files and directories and looked through the directories regarding PDE-363 preparation. He provided three additional records which are being produced with the School District’s Position Statement in this Appeal and advised that no further specified records were found to exist.

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

The Requester argues that additional responsive records should exist because there is a discrepancy between the funding amounts for charter schools reported by the District on the PDE-363 and the amount reported in the #Choose DASD Campaign publication and, therefore, records explaining the discrepancy should exist. The Requester further argues additional records should exist because the #Choose DASD Campaign publication could not have been created solely from the information contained in the PDE-363.

An agency “may satisfy its burden of proof...with either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record.” *Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (quoting *Hodges*, 29 A.3d at 1192); *see Moore v. Off. of Open Recs.*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010) (search of records and affidavit that documents are not in agency’s possession are enough to satisfy burden of demonstrating nonexistence). The District must prove the non-existence of records by a preponderance of the evidence, which is the lowest evidentiary standard, and is tantamount to a

“more likely than not” inquiry. *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021). Items 3 and 4 specifically seek PDE-363 forms for two respective school years, and therefore, the Warihay Attestation is sufficient to carry the District’s burden of proof, as the search was conducted in the District’s business office and records were provided the Director of Finance & Operations, who informed Warihay that all responsive records have been provided. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

However, regarding Items 1 and 2, we have concluded that the portions of the Request that the District claimed were not sufficiently specific actually do satisfy Section 703 of the RTKL, and it is reasonable to infer that the District did not search for all categories of records listed in Items 1 and 2. Accordingly, the record does not demonstrate that a good faith search was conducted in regards to Items 1 and 2 of the Request. *See Uniontown Newspapers, Inc.*, 243 A.3d 19 (Pa. 2020).

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part, and dismissed as moot in part**, and the District is required to conduct a good faith search for records responsive to Items 1 and 2 of the Request, as set forth above and provide responsive records within thirty days. If no responsive records exist, the Board is required to provide the Requester with a statement under the penalty of perjury or a sworn statement affirming the nonexistence of responsive records. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Chester County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per 65 P.S. § 67.1303, but as the quasi-judicial tribunal adjudicating this matter, the OOR is not a

proper party to any appeal and should not be named as a party.³ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 17, 2026

/s/ Kelly C. Isenberg

KELLY C. ISENBERG, ESQ.
DEPUTY CHIEF COUNSEL

Sent via OOR E-file Portal to: Sara-Jane Rice; James Musial, Esq.; Virginia Warihay, AORO

³ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).